IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8337 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVABEN W/O KARSANJI PUNJAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8337 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 21.7.2001 passed by the District

Magistrate, Banaskantha, Palanpur in exercise of powers under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered nine offences registered against the detenu under the Bombay Prohibition Act. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. The detaining authority has considered amongst others following cases registered against the detenue in Palanpur City Police Station under the Bombay Prohibition Act.

(1) C.R No. 210/99 dtd. 11.8.99
(2) C.R No. 125/2000 dt. 20.3.2000 &
(3) C.R No. 169/2000 dt. 8.5.2000

4. Learned Advocate for the petitioner submitted that there is gross non-application of mind on the part of the detaining authority since the detaining authority took into consideration besides other cases the above three cases where the petitioner detenu was acquitted prior to the date of passing of the order. The detaining authority has considered these cases as pending cases and therefore, there is non-application of mind.

5. Learned AGP Mr. S.S. Patel has opposed this petition.

6. Heard learned Advocate for the parties. Mr. Patel, learned Advocate for the petitioner places on record certified copies of the judgement rendered in Summary Case No. 145/2000 and 1354/2000, rendered by the learned Chief Judicial Magistrate, Palanpur, which relate to Palanpur City Prohibition C.R No. 210/99 and 125/2000 respectively indicated at serial Nos. 1 and 2 in the grounds of detention. These cases came to be disposed of on 22nd Dec. 2000 and 27th April, 2001. The detaining authority has erred in relying on these cases as grounds of detention. The subjective satisfaction recorded by the detaining authority is based on these cases also. These cases could not have been considered by the

detaining authority as in these cases detenu was acquitted. The consideration of these cases for detaining the detenu would result into consideration of extraneous and irrelevant factors which would vitiate the order of detention. In this regard, case of Dharamdas Shamlal Agarwal Vs. Police Commissioner and anr. reported in AIR 1989 SC 1282 can be profitably referred to. The order of detention therefore cannot be permitted to stand. Petition therefore deserves to be allowed on this count alone.

7. The petition is therefore, allowed. Order of detention dated 21.7.2001 passed by the District Magistrate, Banaskantha at Palanpur is quashed and set aside. Detenu Divaben wife of Karsanji Punjaji Thakore be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas